gations subsequently incurred by the firm, to one who had no notice of the withdrawal, where such person never knew that the retired partner had been a member of the firm, and therefore did not act upon the belief that he was a member. *In re Stoddard Lumber Co., supra; Hornaday* v. *Cowgill* (Ind.), 101 N. E. 1030.

As to the liability in tort the authorities are very meager, but clearly the same principles would apply and there could be no such liability unless by estoppel, that is, where the tort was caused by a reliance upon the holding out. Thus one held out as partner is not liable for injuries caused by the negligent driving of a wagon belonging to the partnership. *Brudi* v. *Luhrman,* 26 Ind. App. 221, 59 N. E. 409. *Contra, Stables* v. *Eley,* 1 C. & P. 613, 11 C. L. R. 614. But this case has been strongly disapproved. See *Smith* v. *Bailey,* L. R. 2 Q. B. (1891) 403; 1 LINDLEY, PARTNERSHIP 47. Where a dormant partner secretly withdrew from the firm he was held not liable for a subsequent conversion by the partnership of the plaintiff's goods under a writ of attachment. *Shapard* v. *Hynes* (C. C. A.), 104 Fed. 449, 52 L. R. A. 675.

There is no indication that the injury for which the suit was brought in the principal case resulted from any reliance placed on the supposed membership in the firm of the retired partner, and to the extent that such person was held liable, the case would seem unsound.

TRUSTS—CORPUS OF THE TRUST FUND—CORPORATE STOCK.—A testator bequeathed corporate stock in trust, the income to certain beneficiaries for life with remainder over to others. The corporation accumulated a surplus from its earnings. On dissolution, the entire interest of the corporation was sold and the proceeds, together with an accumulated surplus, distributed among the stockholders. *Held,* the surplus also is part of the corpus of the trust estate and goes to the remaindermen. *Wilberding* v. *Miller* (Ohio), 106 N. E. 665.

The question often arises, where corporate stock is held in trust, as to the respective rights of life tenant and remainderman to funds reserved by the corporation from its earnings. There is a prevailing failure to distinguish between the distribution of such funds on dissolution of the corporation and the payment of an extraordinary dividend; and the same rule is often applied in both cases. *In re Connelly's Estate,* 198 Pa. 137, 47 Atl. 1125; *Tuttle* v. *First National Bank of Patterson,* 44 Misc. Rep. 318, 89 N. Y. Supp. 820; *Cobb* v. *Fant,* 36 S. C. 1, 14 S. E. 959; *Lord* v. *Brooks,* 52 N. H. 72.

By the Massachusetts rule all cash dividends are regarded as income, and stock dividends as part of the corpus of the trust esate; the former going to the life tenant, the latter to the remainderman. *Minot* v. *Payne,* 99 Mass. 101. See 1 VA. L. REV. 138. Opposed to this is the Pennsylvania rule regarding all dividends earned after the creation of the trust as income, and those earned before as part of the corpus of the trust estate. *Earp's Appeal,* 28 Pa. St. 368. See 1 VA. L. REV. 138. The latter rule is less technical and more widely accepted. See COOK, CORP., 7 ed., § 554. Some courts, however, regard a fund distributed upon dissolution as capital and a part of the corpus of the trust estate, with-

out regard to its origin as capital or income. This view is justified on the ground that the earnings of a corporation are income only when a dividend has been declared; and are assets which are incapable of being converted into income, after the process of dissolution has begun, since no dividend proper may be then declared. *Gifford* v. *Thompson*, 115 Mass. 478; *Brownell* v. *Anthony*, 189 Mass. 442, 75 N. E. 746; *Bulkeley* v. *Worthington, Ecclesiastical Society*, 78 Conn. 526, 63 Atl. 351, 12 L. R. A. (N. S.) 785. It is further urged that a search to discover the source of such assets would be speculative and impracticable. *Bulkeley* v. *Worthington Ecclesiastical Society, supra.* But a distribution of surplus on the sale of the entire stock of a going corporation, is not analogous to a distribution on dissolution and will be treated as an extraordinary dividend. *Hemenway* v. *Hemenway*, 181 Mass. 406, 63 N. E. 919. To regard the distribution of funds on dissolution as a part of the corpus of the estate provides a simple course of proceedings for trustees; but apportionment, as in the case of an extraordinary dividend, would seem more equitable.

WILLS—CUSTODY—POWER OF A COURT VOLUNTARILY TO ASSUME JURISDICTION.—A statute provided that any court on being informed that a person has custody of a will may compel him to produce it. A circuit court, *sua sponte*, entered an order requiring the delivery of a will, which had never been offered for probate, to the clerk of the court for safekeeping. *Held*, the order is void. *In re Nicholas' Will* (Va.), 83 S. E. 368.

The person named as executor in a will which is in the possession of another party and has never been properly offered for probate, is entitled to its custody for probate. *Bridge* v. *Dillard*, 104 Md. 411, 65 Atl. 10. It has been held that where a will has been deposited with a safe deposit company, a surrogate has no power, in the absence of a statute, to issue an order directing the company to surrender the will. *In re Foos* (N. Y.), 2 Dem. Sur. 600. A judge of probate may, however, at the instance of any person interested in the will cause it to be exhibited for probate. *Stebbins* v. *Lathrop*, 21 Mass. 33.

The rule that the courts in civil cases must wait for a case to be brought before them before they may assume jurisdiction seems to have had its origin in the separation of governmental powers into legislative, executive, and judicial. *Ex parte Davis*, 41 Me. 38. It was early felt that the exercise of executive power by the judiciary would be intolerable. BLACKSTONE, COM., 269. If a case is improperly presented to a court, it is that court's duty to refuse to accept jurisdiction. *Ex parte Davis, supra. Cohen* v. *Trowbridge*, 6 Kan. 385. In England, the courts but mirrored the will of the king. BLACKSTONE, COM., 270. In this country it would seem that since the people are the source of all authority, the courts have only such power as the people have given them, through the Constitution and statutes of the State. *Morin* v. *Claflin*, 100 Me. 271, 61 Atl. 782. So fundamental is this limitation upon the power of the courts, that many cases assume it with little discussion. *Succession of Townsend*, 37 La. Ann. 114; *Johnson* v. *Miller*, 50 Ill. App. 60; *Dowd* v. *Morgan*, 23 Miss. 587.